HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 15, 2015
84th Legislature, Number 50
The House convenes at 10 a.m.

Twelve bills are on the daily calendar for second-reading consideration today. They are listed on the following page.

Alma Allen
Chairman
84(R) - 50

HOUSE RESEARCH ORGANIZATION

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Wednesday, April 15, 2015
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SUBJECT: Including coverage of ovarian cancer screening in health insurance plans

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman

0 nays

WITNESSES: For — Michelle Wittenburg, KK-125 Ovarian Cancer Research Foundation; (*Registered, but did not testify*: Juliana Kerker, American Congress of Obstetricians and Gynecologists, District XI (Texas); Kathy Hutto, AstraZeneca Pharmaceuticals; Steve Bruno, Deanna L. Kuykendall, Kym Olson, Kelly Hyten, and Dale Laine, KK-125 Ovarian Cancer Research Foundation; Patricia Kolodzey, Texas Medical Association; Hugo Berlanga; John Sloan)

Against — (*Registered, but did not testify*: Bill Hammond, Texas Association of Business)

On — Chris Herrick, Texas Department of Insurance

BACKGROUND: Insurance Code, sec. 1370.003 requires health benefit plans that cover diagnostic medical procedures to include coverage for an annual medically recognized diagnostic examination for the early detection of cervical cancer. Any woman 18 and older and enrolled in the plan would be entitled to the coverage. Under this chapter, required coverage for a cervical cancer screening includes at a minimum a conventional Pap smear screening or a liquid-based cytology screening, alone or in combination with a test for the detection of the human papillomavirus (HPV).

DIGEST: HB 2813 would require Texas health benefit plans that cover diagnostic medical procedures to include coverage for an annual CA 125 blood test for the early detection of ovarian cancer. This test would be in addition to the cervical cancer screening already required as part of a woman's annual diagnostic medical examination described under Insurance Code, ch.

1370. This coverage would be required for women 18 and older enrolled in a health benefit plan that covers diagnostic medical procedures.

SUPPORTERS SAY:

HB 2813 would make headway in the prevention and early detection of ovarian cancer by ensuring that certain health insurance plans provided coverage for a simple blood test for ovarian cancer as part of annual well-woman exams. Ovarian cancer has a high mortality rate, largely because the disease has vague symptoms that are not unique to ovarian cancer and that patients do not recognize until the disease is too advanced to treat effectively. Unlike breast or testicular cancer, women cannot do a self-examination to detect ovarian cancer, and women usually are not offered a blood test for ovarian cancer unless they are aware of the disease in their family history, which many patients may not know.

The increase in costs from requiring coverage of an annual ovarian cancer screening would be nominal and it is easier for health insurance plans to administer a mandate than an optional benefit, which some have suggested be offered instead. The CA 125 test costs only $80 and could save the lives of thousands of women through early detection. This test is a step in the right direction.

Allowing patients to have their insurance pay for ovarian cancer screening is especially important because no major information is disseminated about this type of cancer. The CA 125 blood test can result in a false positive, but it is better to investigate a false positive than not have the opportunity to find out about a serious illness. Pap smears for cervical cancer also can result in false positives, but that test still is mandated for all women. When there is a positive test, any subsequent testing can be considered diagnostic testing rather than screening. Medically necessary diagnostic tests are covered by major medical health plans.

OPPONENTS SAY:

By requiring certain health insurance plans to cover ovarian cancer screening in an annual exam, HB 2813 would add a new, expensive mandate. This new mandate would increase the costs of health insurance for businesses and employers and would add to the growing number of uninsured Texans by making health insurance more expensive for consumers.

The bill also would not explicitly require health insurance plans to cover multiple ovarian cancer blood tests in one year, which could cause a consumer to pay out of pocket for subsequent tests to be certain whether or not she had ovarian cancer. Not requiring health insurance plans to cover subsequent tests could cause patients to receive overly aggressive treatment, such as unneeded biopsies. The protein CA 125 is not present in all patients with early-stage ovarian cancer, making the blood test an unreliable indicator. A patient needs to be tested several times a year to be certain that the first test was not a false positive.

NOTES: The companion bill, SB 2003 by Eltife, was scheduled for a public hearing in the Senate Business and Commerce committee on April 14.

SUBJECT: Restricting the sale and possession of shark fins; creating an offense

COMMITTEE: Culture, Recreation, and Tourism — favorable, without amendment

VOTE: 6 ayes — Guillen, Frullo, Larson, Márquez, Murr, Smith

0 nays

1 absent — Dukes

WITNESSES: For — Iris Ho, Humane Society International; Katie Jarl, the Humane Society of the United States; Cara Gustafson; Carol Knight; Craig Nazor; (*Registered, but did not testify*: Joey Park, Coastal Conservation Association Texas; Matt Matthews, Oceana; Jesse McClister, Sea Shepherd; Jordan Henry, Sea Shepherd Conservation Society Austin; Stacy Sutton Kerby, Texas Humane Legislation Network; and nine individuals)

Against — None

On — Larry Young, Texas Parks and Wildlife Department

BACKGROUND: Parks and Wildlife Code, sec. 66.216 stipulates that no person may possess a finfish taken from coastal water — except broadbill swordfish, king mackerel, or shark — that has the head or tail removed, unless the fish has been processed and delivered to the final destination or to a certified dealer.

DIGEST: HB 1579 would prohibit a person from buying or offering to buy, selling or offering to sell, possessing for the purpose of sale, transporting, shipping for the purpose of sale, bartering, or exchanging a shark fin, regardless of where the shark was taken or caught.

A person could buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport, ship for the purpose of sale, barter, or exchange a shark carcass that retained all of its fins naturally attached to the carcass through some portion of uncut skin.

The Texas Parks and Wildlife Department (TPWD) could issue a permit for the possession, transport, sale, or purchase of shark fins for scientific research.

A person who violated this section or a rule adopted under it would commit a class B Parks and Wildlife misdemeanor (up to 180 days in jail and/or a fine ranging from $200 to $2,000). A person who previously had violated this section or a rule adopted under it and had been convicted within five years before the trial date of the most recent violation would commit a class A Parks and Wildlife misdemeanor (up to one year in jail and/or a fine ranging from $500 to $4,000).

A game warden or other peace officer would be required to seize and hold the shark fin as evidence when a person was charged with violating the prohibitions. TPWD would have to destroy the shark fin on the final ruling of a court, regardless of provisions in Parks and Wildlife Code, sec. 12.109 regarding the confiscation and disposition of aquatic products.

The above provisions would apply to any shark species of the subclass *Elasmobranchii*. The bill would define "shark fin" as the fresh and uncooked, or cooked, frozen, dried, or otherwise processed, detached fin or tail of a shark.

The bill also would prohibit a person from possessing a shark whose tail had been removed, unless the fish had been processed and delivered to the final destination or to a certified dealer. A person still could possess a shark whose head had been removed.

HB 1579 would take effect July 1, 2016, and would apply only to an offense committed on or after that date.

SUPPORTERS SAY:

HB 1579 would protect sharks from an unnecessarily cruel death by prohibiting the inhumane practice of shark finning. Finning is a practice in which the shark's fin and tail are cut off while the animal still is alive, and the still-living shark is tossed back into the ocean to die a slow and painful death. The shark dies of shock or blood loss or, because it cannot swim without its fin, the shark sinks to the bottom of the ocean where it either suffocates or is eaten by predators.

There is a national and global push to end the sale of shark fins. Twenty-seven countries have banned shark finning outright, and in China, where shark fin soup is considered a traditional delicacy, the dish has been banned at state dinners. In the United States, nine states also have banned the practice finning and sale of shark fins. In Texas, the shark fin market has grown 240 percent since 2010. HB 1579 would decrease the frequency with which this activity occurs in Texas waters.

The bill would have a negligible impact on the legal shark fishing industry in Texas because the bill would not prohibit shark fishing, an industry that brings in less than $3,500 annually. The bill would not interfere with the legal ability of recreational and commercial fishermen to catch one shark per day, as long as the fins were still attached to the shark's carcass.

Allowing the sale of shark fins in Texas affects the state's oyster industry, reported to be worth $30 million annually. Sharks are at the top of the ocean's ecosystem and affect everything beneath them in the food chain. Sharks eat rays, and rays eat shellfish. If sharks were not there to control the ray population, the rays could overeat the shellfish, leaving little for oystermen to catch.

Sharks produce few offspring, and many face the threat of endangerment or extinction. The sale of shark fins leads to the overfishing of these animals and could accelerate their endangerment or extinction. HB 1579 would preserve sharks for future generations to behold and appreciate.

OPPONENTS SAY:

HB 1579 would not protect sharks from finning, a practice that already is illegal under federal law yet still goes on in Texas waters. People engaged in this illegal activity would not care if the sale of shark fins also was outlawed in Texas and would continue to conduct their business on the black market.

The bill is duplicative of federal law because the U.S. government already requires that sharks caught legally in American waters be landed with their fins attached. HB 1579 simply would reiterate this provision.

OTHER OPPONENTS SAY:

HB 1579 would be one more example of over-criminalization in Texas law. Individuals engaged in the practice of possessing or selling shark fins may deserve a civil fine but not jail time.

SUBJECT: Exempting Distinguished Flying Cross medal recipients from parking fees

COMMITTEE: Defense and Veterans' Affairs — favorable, without amendment

VOTE: 7 ayes — S. King, Frank, Aycock, Blanco, Farias, Schaefer, Shaheen

0 nays

WITNESSES: For — James Kiehle; (*Registered, but did not testify*: Patrick Nugent)

Against — None

On — (*Registered, but did not testify*: Kyle Mitchell, Texas Veterans Commission)

BACKGROUND: Current law provides for the issuance of specialty license plates for disabled veterans and recipients of various military awards. Transportation Code, sec. 681.008 exempts disabled veterans and certain military award recipients who display specialty license plates on their vehicles from parking meter fees charged by state and local governments.

DIGEST: HB 168 would add vehicles displaying a Distinguished Flying Cross medal specialty license plate to the list of vehicles currently exempt from parking meter fees charged by state and local governments.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: HB 168 would recognize the exemplary service of Distinguished Flying Cross medal recipients, many of whom are Vietnam veterans, by providing to them the parking meter fee exemption associated with other military award specialty license plates.

The Distinguished Flying Cross medal is awarded to those who distinguished themselves by heroism or extraordinary achievement while participating in an aerial flight. The state has issued about 1,300 Distinguished Flying Cross medal specialty license plates since it became available in 2004.

Due to an oversight, past legislation did not include this parking meter fee exemption for individuals who have the Distinguished Flying Cross medal license plate. Most specialty license plates issued by the state for various military awards and medals already include parking privileges, such as parking meter fee exemptions. The Distinguished Flying Cross medal license plate is the only specialty license plate for a meritorious service award that has not been granted parking privileges under state law.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Authorizing a study on homeless youth

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Raymond, Rose, Keough, S. King, Naishtat, Peña, Spitzer

0 nays

2 absent — Klick, Price

WITNESSES: For — Katherine Barillas, One Voice Texas; Ken Martin, Texas Homeless Network; KayLa Thomas, the World Youth Foundation, Inc.; Lauryn Farris and Sandra Whitley, Thrive Youth Center; Kristopher Sharp; (*Registered, but did not testify*: Katharine Ligon, Center for Public Policy Priorities; Lee Spiller, Citizens Commission on Human Rights; Christine Bryan, Clarity Child Guidance Center; Charles Reed, Dallas County; Daniel Williams, Equality Texas; Greg Hansch, National Alliance on Mental Illness Texas; Will Francis, National Association of Social Workers - Texas Chapter; Judy Powell, Parent Guidance Center; Maureen Milligan, Teaching Hospitals of Texas; Ashley Harris, Texans Care for Children; Jan Friese, Texas Counseling Association; John Kreager, Texas Criminal Justice Coalition; Mark Terry, Texas Elementary Principals and Supervisors Association; Rebecca Flores, Texas School Alliance; Harrison Hiner, Texas State Employees Union; Dimple Patel, TexProtects; Casey Smith, United Ways of Texas; Melanie Babbitt; Michael Gutierrez; Alicia Vogel)

Against — None

On — Jenna Cooper, University of Houston; (*Registered, but did not testify*: Elizabeth "Liz" Kromrei, Department of Family and Protective Services; Naomi Trejo, Texas Department of Housing and Community Affairs)

DIGEST: CSHB 679 would require the Department of Housing and Community Affairs, along with the Texas Interagency Council for the Homeless, to conduct a study on homeless youth in Texas.

As part of the study, the department would be required to collect data on the number of homeless youth in the state, to examine the needs of homeless youth and the degree to which current programs are meeting those needs, to identify sources of funding that might be available to provide services to homeless youth, and to develop a strategic plan establishing steps to be taken and timelines for reducing youth homelessness in Texas.

The bill would define a "homeless youth" as a person who was younger than 25 years old, including a migratory child as defined by federal law, who:

- lacked a fixed, regular, and adequate nighttime residence, including a person who was temporarily living in a motel or hotel or emergency shelter, was staying in the house of another person, was abandoned in a hospital, or was awaiting foster care placement;
- had a primary nighttime residence that was a public or private place not designed or ordinarily used as a regular sleeping accommodation for humans; or
- was living in a car, park, other public space, abandoned building, substandard housing, bus or train station, or similar setting.

The department would be required to submit a report on the study to the Legislature by December 1, 2016. The report would have to include recommendations for changes in law necessary to assist and provide services to homeless youth in Texas. The section of law requiring the study would expire September 1, 2017.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 679 would be an important step in addressing youth homelessness by requiring that data be collected on this population and its needs. Available data suggest that the state has an abundance of homeless youth, although the precise number currently is unknown. Estimates based on

federal data indicate that more than 110,000 students in Texas public schools have been identified as homeless. More information is needed on how many homeless youth are in Texas and what actions must be taken to reduce youth homelessness.

The bill would help to address a pressing societal issue. National statistics show homeless youth are vulnerable to human trafficking, to low educational attainment, to mental health issues, and to other negative outcomes associated with lacking a safe and stable living environment. A University of Houston study on homeless youth in Harris County found that many youth who go to shelters do not stay the night because the shelters are full. In addition, more than half of those surveyed had been involved in a public system of care at some point, such as foster care or the juvenile justice system. More comprehensive data about youth homelessness across Texas would help the state to better serve the needs of this population.

Currently, state agencies and nonprofit or faith-based service providers have to rely on anecdotal evidence, national statistics, or a patchwork of local studies to inform their work. Point-in-time counts, which aim to tally the number of homeless people on the street, do not always provide an accurate assessment of the numbers and needs of homeless youth, especially if the youth are living in a shelter or are otherwise indoors. Furthermore, these assessments are not statewide surveys, and there is no consistent definition of homeless youth across these studies, making estimates inaccurate and inconsistent. A statewide study on homeless youth would ensure that state dollars were spent efficiently to better measure this population and to take steps to improve outcomes for homeless youth.

OPPONENTS SAY:

CSHB 679 would be unnecessary because local and national organizations already gather this information through point-in-time counts and other studies. The state does not need to duplicate the work of nonprofits and faith-based organizations.

NOTES:

Unlike CSHB 679, the bill as filed would have directed the Department of Family and Protective Services, the Texas Education Agency, and the

Texas Homeless Education Office to assist the Department of Housing and Community Affairs with the study. The substitute would direct the Texas Interagency Council for the Homeless, which includes representatives from various agencies, to assist with the study. The substitute also would require the department, as part of the study, to develop a strategic plan establishing steps to be taken and timelines for reducing youth homelessness in this state.

The Senate companion bill, SB 1892 by Garcia, was referred to the Senate Health and Human Services Committee on March 25.

SUBJECT: Adjusting compensation, leave policy for certain peace officers

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray

0 nays

WITNESSES: For — David Sinclair, Game Warden Peace Officers Association (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Claudia Arredondo, Texas Office of Attorney General; Lon Craft, TMPA; Jeanette Soefje, Les St. James, Joseph Cadwell, Laurent Gauthier, Pete LaFuente, Samantha Lee, Matt Pearce, Blane Rodgers, John Schneemann, Raul Gonzalez, Stormye Jackson, Junius Smith, James Abbott, Everett Adcock, Edwin Broekhuizen, Patricia Griffith, John Keesey, John Reid, Jaime Sanchez, Erik Cabrera, Steve Ried, Robert Sunley, Ross Behrens, Bruce Koch, John Green, Rustin Haby, Lannes Hilboldt, Jerry Meadors, Cody Smirl, Robert DeRohn, Dave Howell, Dalia Ramos, Brandon Reiser, Javier Gallegos, Robert Hernandez, Clinton Lanfear, Jason Anderson, Ricardo Arredondo, Landrah Polansky, Mike Alvarez, Texas Attorney General's Peace Officers Association; Wayne Rubio)

Against — (*Registered, but did not testify*: Landrah Polansky, Texas Attorney General's Peace Officers Association)

On — (*Registered, but did not testify*: Katherine Cary, Office of the Attorney General)

BACKGROUND: Government Code, sec. 402.009 allows the attorney general to employ and commission peace officers as investigators to assist the attorney general's office in carrying out its duties relating to prosecution assistance and crime prevention.

DIGEST: **Employee classification and pay.** HB 2037 would amend the Government Code to require that peace officers employed by the attorney

general be compensated according to schedule C of the position classification salary schedule prescribed by the general appropriations act. The bill also would define the attorney general's commissioned law enforcement officers as state employees for the purposes of entitling the officers to hazardous duty pay and injury leave for injuries sustained in the course of their duties. This bill would apply only to injuries that occured on or after the effective date of the bill.

The classification officer in the office of the state auditor would be required to temporarily classify the position of a commissioned peace officer employed as an investigator by the Office of the Attorney General (OAG) as a schedule C position under the 1961 Texas Position Classification Plan. This provision would apply beginning September 1, 2015, and would expire on September 1, 2017.

Legislative leave pool. HB 2037 also would add sections to the Alcoholic Beverage Code, Government Code, and Parks and Wildlife Code to allow peace officers employed by certain state agencies to transfer up to eight hours of compensatory time or annual leave earned per year into a legislative leave pool for each agency.

The Texas Alcoholic Beverage Commission's legislative leave pool would be administered by the commission's administrator or designee, the Office of the Attorney General's pool (under the Government Code) would be administered by the attorney general or designee, and the Parks and Wildlife Department's pool would be administered by the department's director or designee. The bill would require each agency to adopt rules and procedures for the operation of the legislative leave pool.

For an officer donating time to the legislative leave pool, the administrator would credit the pool with the amount of time contributed by an officer, and a corresponding amount of time would be deducted from the officer's earned compensatory time or annual leave as if the officer had used the time for personal purposes. For an officer using time contributed to the pool for a purpose allowed under the bill, the administrator would transfer time from the pool and credit the time to the peace officer.

Peace officers commissioned by the Attorney General and the Alcoholic

Beverage Commission would be allowed to use the time contributed to the legislative leave pool on behalf of a law enforcement association of at least 50 active or retired members governed by a board of directors. The same requirement would apply to a Parks and Wildlife peace officer on behalf of an association of at least 350 members. An officer could use time from the legislative leave pool only with consent of the president or designee of the law enforcement association, would be restricted to using no more than 80 hours in a 160-hour work cycle, and could not draw more than 480 hours from the pool in a fiscal year.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 2037 would fix an inequity in the pay of peace officers employed by the attorney general by paying them the same amount as law enforcement officers employed by other state agencies. Currently, other officers are paid an average of about $6,000 more per year. The duties of officers employed by the attorney general are critical to many important law enforcement investigations and prosecutions, such as obtaining convictions for child pornography through the Cyber Crimes Unit and identifying more than $500 million in Medicaid overpayments through the Medicaid Fraud Control Unit. Those officers deserve to receive similar compensation, hazard duty pay, and injury compensation as law enforcement officers from other agencies.

There are currently four state agencies that pay their law enforcement officers according to salary schedule C, including the Department of Public Safety, Texas Department of Criminal Justice, Texas Parks and Wildlife Department, and Texas Alcoholic Beverage Commission. This bill would bring the pay and benefits for law enforcement officers commissioned by the attorney general in line with law enforcement officers from these agencies.

The bill also would give many law enforcement organizations the opportunity to be represented by their member officers at the Legislature through the creation of legislative leave pools. Under the bill, officers would not have to use their personal time to represent their views before the Legislature. The time would not be misused because an officer would be able to use this time only with the consent of the president of the law

enforcement organization and according to the rules of the agency. Internal agency policy likely would limit who could use the legislative leave time, and it would be locally controlled by the agency.

OPPONENTS SAY:

HB 2037 could lead to misuse of compensatory time and annual leave if officers used their legislative leave pool hours for inappropriate reasons that did not benefit their organizations. The organizations would have to closely monitor whether the hours were actually used for legislative purposes.

OTHER OPPONENTS SAY:

HB 2037 would designate an arbitrary maximum number of eight hours that an officer could contribute to the legislative leave pool each year. Some officers would use more legislative leave pool time than others, and some officers have more accrued compensatory and annual leave than others. Each officer should be able to decide how many hours they would like to contribute to the pool.

NOTES:

According to the fiscal note, the Legislative Budget Board estimates the cost of adding employees to the schedule C salary would be about $4 million in general revenue-related funds, $1.9 million in federal funds, and $189,000 in funds for interagency contracts through fiscal 2016-17. The legislative leave pool could be funded through existing resources, according to the fiscal note.

The companion bill, SB 1355 by Hinojosa, was referred to the Senate Criminal Justice Committee on March 18.

SUBJECT: Awarding college credit for Advanced Placement exams; requiring a study

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Zerwas, Howard, Alonzo, Crownover, Martinez, Morrison, Raney, C. Turner

0 nays

1 absent — Clardy

WITNESSES: For — Jason Langdon, College Board; Coila Morrow; (*Registered, but did not testify*: Casey McCreary, Texas Association of School Administrators, Texas Association of School Boards; Courtney Boswell, Texas Institute for Education Reform; Casey Smith, United Ways of Texas; Susan Everett; Linda Webb)

Against — None

BACKGROUND: Education Code, sec. 51.968 outlines the procedure for public institutions of higher education to award college credit for postsecondary-level programs, including the Advanced Placement (AP) exam.

Each public institution is required to establish policies for awarding college credit to incoming freshmen based on their AP exam performance.

DIGEST: CSHB 1992 would require all public institutions of higher education to award college credit for lower-division courses if a student earned a score of 3 or higher on the corresponding Advanced Placement (AP) exam, unless the institution's chief academic officer determined, based on evidence, that a higher score was needed to indicate the student's sufficient preparation for related, more advanced courses for which the lower-division course was a prerequisite. This credit policy would apply to freshmen entering the state's public institutions beginning with the fall 2016 semester.

The bill also would require the Texas Higher Education Coordinating

Board to conduct a study comparing the academic performance, retention rates, and graduation rates of students who took lower-division courses with those of students who earned a 3 or higher on the AP exam and received credit for the course. Each of the state's higher education institutions would have to submit to the board any data requested for the study. The board would be required to adopt rules necessary to implement the study in a manner compliant with federal law on confidentiality of student educational information.

A report on the study containing recommendations for legislative or administrative action would be due to the governor, the lieutenant governor, the speaker of the House, and the higher education committee in each chamber by January 1, 2017. The section requiring the study would expire September 1, 2017.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1992 would increase access to college credit by requiring public higher education institutions to accept scores of 3 or higher on AP exams, allowing more students to earn a college degree more quickly and save on tuition costs. Students who earn college credit while still in high school would have to take fewer courses in college, which would save tuition money for families and financial aid costs for the state. More students would enter the workforce faster and better trained because they could bypass introductory courses and take more advanced coursework. The result would be better educated, higher earning taxpayers graduating at a faster rate.

Many institutions in Texas already award credit for scores of at least 3 on the AP exam, which is considered "qualified" on the AP exam's five-point scale. By making the policy uniform across the state, this bill would allow more students to leverage their hard work in high school into academic and economic rewards at the college level, which is a priority of the governor's this legislative session.

CSHB 1992 would provide an excellent opportunity for higher education

and K-12 education systems to collaborate and coordinate more effectively. Studies have shown that cohorts of students who achieved a 3 on their AP exams and placed out of courses perform just as well academically as cohorts who took the courses instead. The bill would incentivize more students to do well in high school AP courses and achieve a credit-earning AP exam score. Many colleges accept a "pass" in dual-credit courses for college credit. A score of 3 on the AP exam, which is considered a passing score, also should be accepted for credit. Furthermore, the bill would honor the hard work of AP teachers, who are tasked with preparing students not only for passing the AP exam but for completing college-level work in high school.

The bill also would remove barriers to disadvantaged students. Inconsistent score requirements can cause confusion for students navigating their college options. Although many schools will grant credit for lower AP scores earned by students who advocate for themselves, first-generation students or those without that knowledge are unlikely to do so. While Texas school districts often pay many low-income students' AP exam fees, that investment is lost if the student earns less than what is required at a certain college or university.

While increasing the uniformity of AP credit policies, CSHB 1992 also would allow universities to provide compelling reasons why certain lower-division courses should require higher AP scores for credit. This exception would help institutions maintain academic rigor and properly prepare their students for higher-level coursework. In addition, requiring schools to provide evidence to demonstrate why the scores need to be higher would develop more sound policies and could identify potential gaps between AP courses and college-level courses.

The bill's requirement for conducting a study on academic performance across institutions would yield essential information about accepting AP scores for college credit across academic disciplines. No such study in Texas has been done, and it would be valuable in identifying how scores correspond to levels of academic mastery across different courses.

Concerns about the costs and administrative burden of data tracking are exaggerated. The College Board, which administers the AP exams,

typically waives its fees to access the kind of score data that the coordinating board might request under CSHB 1992.

OPPONENTS SAY:

CSHB 1992 would hurt students and academic rigor by requiring universities to accept a score of at least 3 on the AP exam for credit. Some schools have found that students who achieve a 3 in certain subject areas are not prepared for the corresponding college-level course, much less subsequent courses. Professors would have to "dumb down" their courses to accommodate students who took higher-level classes after skipping necessary prerequisites by virtue of meeting lower AP score requirements.

OTHER OPPONENTS SAY:

The January 1, 2017 report date for the study required by the bill would not provide enough time in which to gather information and draw meaningful conclusions about the academic performance and outcomes of the student groups in question, particularly if state leaders seek data on the effects of introducing a uniform AP college credit policy beginning with the entering freshman class in fall 2016.

The bill would require multiple parties to track and share data they do not currently track, which would create an administrative burden and added costs. The College Board already seems to track and analyze all these data.

NOTES:

Unlike HB 1992 as introduced, CSHB 1992 would require institutions generally to accept a score of 3 only for college-level credit in lower-division courses, and only if a chief academic officer determined that a higher score was not necessary to indicate sufficient preparation for more advanced courses. HB 1992 as introduced would not have required the study in the committee substitute and would have taken effect September 1, 2015.

SUBJECT: Increasing the penalty for persons who claim fraudulent military records

COMMITTEE: Defense and Veterans' Affairs — favorable, without amendment

VOTE: 5 ayes — S. King, Frank, Blanco, Farias, Shaheen

1 nay — Schaefer

1 present not voting — Aycock

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Kyle Mitchell, Texas Veterans Commission)

BACKGROUND: Under Penal Code, sec. 32.54, a person commits the offense of fraudulent or fictitious military record if the person uses or claims to hold a military record that the person knows is fraudulent, fictitious, or has been revoked and the person uses that military record to promote a business or with the intent to:

- obtain priority in receiving services for state-funded job training or employment assistance programs or in Texas Veterans Commission programs that enhance training and employment opportunities for veterans;
- qualify for a veteran's employment preference;
- obtain a license or certificate to practice a trade, profession, or occupation;
- obtain a promotion, compensation, or other benefit, or an increase in compensation or other benefit;
- obtain a benefit, service, or donation from another person;
- obtain admission to an educational program in this state; or
- gain a position in state government with authority over another person, regardless of whether the actor receives compensation for the position.

Fraudulent or fictitious military record is a class C misdemeanor (maximum fine of $500).

DIGEST:

HB 822 would increase the penalty for fraudulent or fictitious military record from a class C misdemeanor to a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 822 is needed to discourage the reprehensible behavior of those who fraudulently represent themselves as veterans for financial gain. It would bring existing state penalties in line with the penalties under the federal Stolen Valor Act. The enhancement to an existing offense would allow state and local prosecutors to aggressively prosecute individuals who commit these crimes.

Although there may be some overlap between the punishments under the fraudulent or fictitious military record law and other laws, there are serious crimes that could be inadequately punished if the penalty remained a class C misdemeanor.

OPPONENTS SAY:

HB 822 is unnecessary because the most egregious instances of fraudulent or fictitious military record would be actionable under various other state and federal laws. For the other cases, a class C misdemeanor probably is a sufficient punishment.

The bill's enhancement from a class C to a class A misdemeanor could lead to more incarcerations, which could come at a significant cost to counties that would be only partially offset by the increased fines.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have no significant fiscal implication to the state. The increase in revenue from higher fines would vary depending on the number of offenses but could be offset by costs associated with increased jail time.

The companion bill, SB 835 by V. Taylor, was approved by the Senate on April 9.

SUBJECT: Requiring a majority to appoint finance commissioners

COMMITTEE: Investments and Financial Services — favorable, without amendment

VOTE: 7 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Pickett, Stephenson

0 nays

WITNESSES: For — (*Registered, but did not testify*: Stephen Scurlock, Independent Bankers Association of Texas; John Heasley, Texas Bankers Association; John Fleming, Texas Mortgage Bankers Association)

Against — (*Registered, but did not testify*: Teresa Beckmeyer; Marla Flint)

On — (*Registered, but did not testify*: Stephanie Newberg, Texas Department of Banking)

BACKGROUND: SB 249 by Estes, enacted by the 82nd Legislature in 2011, expanded the membership of the Finance Commission of Texas from nine to 11 members.

Finance Code, sec. 12.101(a) requires that the Finance Commission appoint the banking commissioner by at least five affirmative votes. Sec. 13.002(a) requires that the commission appoint the savings and mortgage lending commissioner by at least five affirmative votes.

DIGEST: HB 3536 would remove language from Finance Code, sec. 12.101(a) that specifies at least five affirmative votes are required to elect the banking commissioner. It also would remove language from sec. 13.002(a) that specifies at least five affirmative votes are required to elect the savings and mortgage lending commissioner.

The bill would take effect September 1, 2015, and would apply only to the appointment of a banking or savings and mortgage lending commissioner appointed on or after that date.

SUPPORTERS SAY:

HB 3536 is a necessary measure to take into account the expanded membership of the Finance Commission, with five votes no longer constituting a majority. The bill would prevent a minority on the Finance Commission from appointing the savings and mortgage lending or banking commissioners. By striking the vote specification, the bill would future-proof the Finance Code in the event the Finance Commission was expanded further.

Removing the five-vote requirement also would bring the Finance Commission's approach for electing commissioners in line with how it already appoints the consumer credit commissioner, another post it is responsible for electing. Currently, there is no specific vote requirement for electing the consumer credit commissioner in statute, and the Finance Commission uses its internal rules to appoint this office. This method has worked well for appointing the consumer credit commissioner, and the bill would update the Finance Code so all three commissioners were appointed in the same way.

It is unlikely that a small quorum would be present at a Finance Commission meeting and appoint a new banking or savings and mortgage lending commissioner with fewer than five affirmative votes. The meetings are well attended, and most members attend all meetings.

OPPONENTS SAY:

By removing the requirement for five affirmative votes, HB 3536 could lead to a situation where commissioners were elected at poorly attended meetings by fewer than five members of the Finance Commission.

The law should specify in greater detail how these offices would be appointed because the public lacks access to the bylaws and internal rules of the Finance Commission.

NOTES:

The Senate companion bill, SB 657 by Eltife, was approved by the Senate on the local and uncontested calendar on April 9.

SUBJECT: Authorizing certain real property transactions involving DPS

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Cook, Giddings, Craddick, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Oliveira, Smithee, Sylvester Turner

0 nays

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Paul Watkins, Department of Public Safety)

DIGEST: CSHB 1617 would authorize the Department of Public Safety (DPS) to convey a 3.167-acre tract of land in Shelby County to the First United Pentecostal Church of Center, Texas in exchange for a 2.724-acre tract owned by the church.

The bill would allow the conveyance only if the fair market value of the church-owned land is equal to or greater than the fair market value of the state-owned land. The fair market values of the two land parcels would be established by an independent appraisal obtained by the asset management division of the General Land Office. The church and DPS would equally share in the cost of the fees and expenses incurred by the land office.

In connection with the proposed conveyance, the state would reserve its interest in all oil, gas, and other minerals. The state would retain its right to remove any minerals and to grant a lease held by the state relating to the removal of minerals before a conveyance of the property.

The bill would exempt the proposed conveyance from certain requirements in Natural Resources Code, ch. 31, that:

- allow the land commissioner to recommend real estate transactions

to the governor;

- require the land office to follow certain procedures for real estate transactions authorized by the Legislature; and
- give the School Land Board first option to purchase real property authorized for sale by the Legislature.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1617 would allow DPS to convey land it owns in Center, Texas, to the First United Pentecostal Church in exchange for a similarly sized nearby parcel. This land swap would help the church expand to adjacent property where the driver's license office is currently located. Although the transaction would necessitate the construction of a new state driver's license office and boat storage barn for the Texas Parks and Wildlife Department, both facilities are in need of replacement.

The House-passed budget bill includes $1 million in Article 11 for construction of the new facility. According to DPS, the existing driver's license office is in poor condition. A new facility would be less expensive to operate and would be conveniently located within one-half mile of the existing facility.

The property swap would occur only after a review by the land office determines that the church land is at least as valuable as the state land. While some have said the proposed conveyance should be subject to the land and facility review processes of the Texas Facilities Commission, this is a small facility and DPS is in the best position to determine whether the existing facility should be replaced.

OPPONENTS SAY:

The proposed land swap authorized by CSHB 1617 would be unusual and outside of regular state procedures for transactions involving state-owned real property. The Texas Facilities Commission has a process for reviewing state facilities and recommending when buildings should be repaired or replaced. Although DPS would be pleased to have a new driver's license office in Center, there are other, more urgent facilities needs across the state.

DPS estimates the cost of replacing the driver's license building at $1.1 million. CSHB 1, as passed by the House, includes $1 million in Article 11 for the project. It is unclear how the new building would be financed if the money was not included in the final version of the fiscal 2016-17 budget.

NOTES:

Unlike the bill as introduced, the committee substitute would require DPS and the church to split the fees and expenses incurred by the land office in determining the fair market value of the two land parcels.

SUBJECT: Revising certain sections of the Business Organizations Code

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES: For — Byron Egan, Lori Ann Fox, and Daryl Robertson, Texas Business Law Foundation; (*Registered, but did not testify*: Brittney Booth and John Kuhl, Texas Business Law Foundation)

Against — None

On — (*Registered, but did not testify*: Carmen Flores, Texas Secretary of State)

BACKGROUND: The Texas Business Organizations Code (BOC) was enacted in 2003 through HB 1156 by Giddings. It took effect January 1, 2006. BOC codified prior source laws pertaining to businesses. Effective January 1, 2010, the underlying source laws were repealed, and the transition to exclusive use of BOC was complete. Since then, technical and substantive amendments were made to BOC in 2011 and 2013.

DIGEST: CSHB 2142 would revise provisions of the state's Business Organizations Code (BOC) related to mergers, ratification and validation of defective corporate acts and putative shares, and approval of fundamental business actions. It also would make technical and conforming changes to BOC.

Mergers. CSHB 2142 would authorize corporations to engage in a type of merger, commonly referred to as a two-step merger, which did not require shareholder approval under certain circumstances, unless approval was required by the corporation's certificate of formation. This authorization would apply only to a domestic for-profit corporation that was part of the merger and whose shares, immediately before the date its board of directors approved the plan of merger, were either listed on a national securities exchange or held of record by at least 2,000 shareholders.

The plan of merger expressly would have to permit or require this type of merger and to provide that any merger take place as soon as practicable after the consummation of a tender or exchange offer consummated under certain circumstances. The shares that would be converted and exchanged in the merger would be entitled to be valued like those of the holders who tendered shares to the acquirer in the tender or exchange offer.

The bill would allow those with ownership interests in a domestic entity subject to dissenter's rights to dissent from a merger if the shares of the shareholders were converted or exchanged, if that merger took place under a plan for a two-step merger described above. In the event of a two-step merger, the responsible organization would have to notify the shareholders who had a right to dissent of their rights no later than 10 days after the merger's effective date. The bill would require certain information to be included in the notice.

Governing documents of each domestic entity that survived a merger could be amended, restated, or amended and restated to the extent provided by the plan of merger. A certificate of amendment, a restated certificate of formation without an amendment, or a restated certificate of formation containing amendments of a surviving entity would supersede the original certificate of formation and prior changes to it. The restated certificate of formation would become the effective certificate of formation.

Except in a type of short-form merger, a certificate of merger that was required to be filed would have to include the amendments to the certificate of formation of any filing entity that was a party to the merger or a statement that amendments were being made to the certificate of formation of any filing entity involved in the merger. If no amendment was going to be made to the certificate of formation, the certificate of merger would have to include a statement to that effect, which also could refer to a restated certificate of formation attached to the certificate of merger. The bill would allow the following to be filed as an attachment to a certificate of merger: a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments for any filing entity that was a party to the

merger. The bill also would allow a plan of merger to include similar amendments.

Ratification and validation of certain acts and shares. The bill would define a "defective corporate act" as:

- an overissue;
- an election or appointment of directors that was void or voidable due to a failure of authorization; or
- any act or transaction purportedly taken by or on behalf of the corporation that was within its power but was void or voidable due to a failure of authorization.

"Putative shares" would mean the shares of any class or series of the corporation that would constitute valid shares, if not for the failure of authorization, or that could not be determined by the board of directors to be valid shares. A "failure of authorization" would be the failure to authorize certain acts, documents, or agreements if and to the extent the failure would render the act or transaction void or voidable.

The bill would specify that a defective corporate act or putative shares were not void or voidable solely as a result of a failure of authorization if the act or shares were ratified or validated by the district court. To ratify a defective corporate act, the board of the directors of the corporation would adopt a resolution that stated the defective corporate act to be ratified, the time of the defective corporate act, if the defective corporate act involved the issuance of putative shares, the number and type of putative shares issued and the date of issue, the nature of the failure of authorization, and that the board of directors approved the ratification of the defective corporate act. The resolution also could state that the board of directors at any time before the validation effective time could abandon the resolution without further shareholder action, notwithstanding the adoption of the resolution by the shareholders.

Absent a ruling from the district court, the bill would prohibit the defective corporate acts or putative shares set forth in those resolutions from being considered void or voidable as a result of a failure of authorization identified in the resolution. The effect would be retroactive

to the time of the defective corporate act, and the putative shares would be considered as an identical share or fraction of a share outstanding as of the time it purportedly was issued. The bill would require prompt notice to be given to the shareholders after a resolution was adopted.

CSHB 2142 specifies that ratification and validation would not be the exclusive means of ratifying or validating any act taken by a corporation and that the absence or failure of ratification of an act alone would not be enough to affect the validity of the act or transaction. This absence or failure of ratification also would not create a presumption that the act or transaction was a defective corporate act or that the shares in question were void or voidable.

Certain entities could bring an action regarding the validity of defective corporate acts and shares. In this kind of action, the district court could determine the validity and effectiveness of any defective corporate act that was ratified, the ratification of any defective corporate act, any defective corporate act either not ratified or not ratified effectively, and any corporate act or transaction of any shares, rights, or options to acquire shares. The court also could modify or waive any of the ratification procedures. The bill would provide a number of actions the district court could take and criteria the court could consider in making its decision.

In the absence of actual fraud, the bill would authorize as conclusive the judgment of the board of directors of a domestic for-profit corporation that its shares were valid or putative, unless otherwise determined by the district court.

Approval of fundamental business actions. The bill would stipulate approval procedures for a domestic non-profit corporation to approve certain business actions, including a voluntary winding up, reinstatement, cancellation of an event requiring winding up, revocation of a voluntary decision to wind up, or distribution plan.

Domestic non-profit corporations would use different approval procedures depending on whether they had assets. If the corporation had no members or had no members with voting rights and the corporation held any assets or had solicited any assets, the corporation’s board of directors would

have to adopt a resolution by an affirmative vote of the majority of directors. If such a corporation did not hold any assets and had not solicited any assets, a majority of the organizers or the board of directors of the corporation would have to adopt a resolution by an affirmative vote of a majority of the organizers or a majority of the directors in office. That vote also would be required by such a corporation to approve certain other fundamental actions.

Shareholders of a corporation could give written consent, or the organizers of a corporation could adopt a resolution, to authorize a restated certificate of formation that contained an amendment to cancel an event requiring winding up.

Additional changes. CSHB 2142 would make numerous other changes to BOC that would include:

- requirements for shareholders agreements;
- authorization to use a formula to determine the value of the shares of a domestic for-profit corporation;
- authorization to make the terms of a plan of merger, exchange, or conversion dependent on facts ascertainable outside of the plan; and
- a definition of "owner liability," which would replace references to "personal liability" in the code.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2142 would help the Business Organizations Code (BOC) to continue serving its intended purpose of making Texas business laws efficient and effective. Since BOC's inception, substantive and technical amendments have been made to it during each legislative session. The purpose of the updates is to ensure BOC constantly is evolving to match the needs of businesses in Texas and abroad.

Currently, because Texas law differs from that in other states such as Delaware, it is difficult for a multi-district business owner to comply with Texas requirements. This bill would help make those transactions more uniform with other states and would make explicit certain aspects of BOC

that already are implied. Making certain implied options explicit under BOC would help Texas businesses better understand what current law allows and would promote consistency in business organization law across states.

OPPONENTS SAY:

No apparent opposition.

NOTES:

CSHB 2142 differs from the bill as filed in that the committee substitute would:

- allow any terms of a plan of merger, plan of exchange, and plan of conversion to be made dependent on facts ascertainable outside of the plan if the manner in which those facts would operate was clearly and expressly stated in the plan;
- specify that approval procedures stipulated in the bill apply only to a non-profit corporation that did not have assets and had not solicited assets; and
- make additional technical changes.

The Senate companion bill, SB 860 by Eltife, was approved by the Senate on the local and uncontested calendar on April 9.

SUBJECT: Prohibiting compelled production of certain records without payment

COMMITTEE: Investments and Financial Services — favorable, without amendment

VOTE: 7 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Pickett, Stephenson

0 nays

WITNESSES: For — Karen Neeley and Stephen Scurlock, Independent Bankers Association of Texas; (*Registered, but did not testify*: Melodie Durst, Credit Union Coalition of Texas; John Heasley, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; John Fleming, Texas Mortgage Bankers Association; Marla Flint)

Against — None

BACKGROUND: Finance Code, sec. 59.006 provides the exclusive method to compel a financial institution to produce customer records as litigation discovery. The provisions of this section do not apply to certain record requests, including demands or inquiries from a state or federal government agency.

Sec. 59.006(b) lists the conditions under which a financial institution must produce records in response to a request, including that:

- the record request be made at least 24 days before the date that compliance with the request is required; and
- the party requesting the records pay the cost of production or post a bond to cover the cost before the financial institution complies with the request.

DIGEST: HB 2394 would amend Finance Code, sec. 59.006 to prohibit a court from ordering a financial institution to produce a record or finding the financial institution in contempt of court for failing to produce a record if the requesting party had not paid the costs of production or posted a cost bond.

The bill would take effect September 1, 2015, and would apply only to a record request submitted on or after this date.

SUPPORTERS SAY:

HB 2394 would emphasize existing law that requires certain requestors to pay financial institutions to produce records. In some cases, such as commercial real estate disputes, requests for customer records can be voluminous, requiring a substantial amount of time and money for the financial institution to fulfill the request. Responding to requests from state or federal law enforcement agencies, which are exempted from paying financial institutions to produce records, is just a cost of doing business. However, when a private party requests records from a financial institution that is not otherwise involved in the litigation, it is unfair to force banks to either produce expensive records or face contempt of court.

Although the cost burden is explicit, some lawyers continue to request customer records from financial institutions without paying for them. When a presiding judge has been unclear on the law, some financial institutions have been compelled to produce documents for which they were not paid.

OPPONENTS SAY:

HB 2394 could further delay record requests and take power away from the judiciary. Financial institutions can be reluctant to respond to record requests, and this bill could make it more difficult to obtain records by providing one more cause for delay.

This bill could create roadblocks for litigants with fewer resources than opponents who may be wealthier or have assets in several different banks. If there were a disparity in the wealth of litigants, a judge could choose to relax disclosure law, but HB 2394 would take away discretion a judge may have in this regard.

NOTES:

The Senate companion bill, SB 926 by Creighton, was referred to the Senate Business and Commerce Committee on March 9.

SUBJECT: Increasing the amount that may be used to guarantee agricultural loans

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 7 ayes — T. King, C. Anderson, Cyrier, González, Rinaldi, Simpson, Springer

0 nays

WITNESSES: For — (*Registered, but did not testify*: David Gibson, Corn Producers Association of Texas; John Zacek, Prosperity Bank, Texas Agricultural Finance Authority)

Against — None

On — Karen Reichek, Texas Department of Agriculture

BACKGROUND: The Texas Agricultural Finance Authority (TAFA) was created in 1987 as a public finance authority within the Texas Department of Agriculture (TDA). Texas Agriculture Code, ch. 58, subch. E governs the Agricultural Loan Guarantee Program, which was created in 2009 for TAFA to provide loan guarantees to lenders on behalf of eligible agriculture producers or agriculture-related businesses who otherwise would be denied a traditional loan due to a lack of capital or other issues in their loan applications. The TAFA guarantee adds protection against reasonable risks associated with the loan by guaranteeing a percentage of debt in the event of a loan default.

The Agricultural Loan Guarantee program is backed by the Texas Agricultural Fund, which receives its funding through state and federal money, bonds, and other sources. According to TDA, the Texas Agricultural Fund balance was about $18.8 million as of September 30, 2014. Under Agriculture Code, sec. 58.052(c), no more than three-fourths of the balance (about $14.1 million) may be used to guarantee loans.

TAFA has guaranteed 52 loans, five of which have been paid off. The total current guaranteed amount is about $11 million. About $3.1 million

is available for additional guarantees.

DIGEST:

HB 2350 would allow the Texas Agricultural Finance Authority to use up to three times the amount contained in the Texas Agricultural Fund to guarantee loans under the Agricultural Loan Guarantee program, instead of up to three-fourths of the fund as currently allowed.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 2350 would allow the Texas Agricultural Finance Authority (TAFA) to help more farmers, ranchers, and agribusiness owners in Texas by increasing the amount that may be used to guarantee loans under the Agricultural Loan Guarantee Program. By allowing TAFA to use up to three times the fund's current balance, the bill would make $56.4 million available for loan guarantees to the state's farmers.

The Agricultural Loan Guarantee Program's existing standards are overly cautious and out of step with industry standards, which typically require setting aside a far smaller percentage to protect lenders against catastrophic losses. In fact, private lenders and other states, such as California, allow as much as five times the balances of their funds to be used for loan guarantees. This overabundance of caution severely limits the number of agricultural businesses and hardworking farmers that the program is able to serve. HB 2350 would bring statute more into line with industry standards to help TAFA continue assisting the next generation of farmers and ranchers and to keep the Agricultural Loan Guarantee Program competitive with similar loan guarantee programs.

While raising the amount available for loan guarantees could increase the Texas Agricultural Fund's exposure to loss, this proposal still would be conservative in comparison to the industry standard and what other states permit. Additionally, the Agricultural Loan Guarantee Program has been highly successful and never has experienced a default in its history. A significant amount of underwriting takes place before a guarantee is granted and the loans are typically highly collateralized, so liquidation of assets would limit a payout amount in the event of a default.

OPPONENTS

HB 2350 significantly would increase the Texas Agricultural Fund's

SAY:

exposure to loss. The state's prudent existing strategy should be maintained because borrowers that benefit from the Agricultural Loan Guarantee Program use this service because they have been turned down by a lending institution due to a weakness in their loan application. While the program has not experienced any defaults, it would be inappropriate to increase the funds available to a group of borrowers known to be a risk.

This legislation also is unnecessary because more than $3 million is still available for additional guarantees. There is no need to increase the availability of funds if the existing statutory limitation has not been reached.

NOTES:

According to the Legislative Budget Board's fiscal note, the fiscal implication of HB 2350 cannot be determined at this time.